

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGEL RIVERA, *et al.*,
Plaintiffs,

-v-

787 COFFEE LLC, *et al.*,
Defendants.

22-CV-1596 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On February 25, 2022, Angel Rivera (“Rivera”), on behalf of himself and others similarly situated, initiated a collective action under the Fair Labor Standards Act (“FLSA”) and state law against Defendants 787 Coffee LLC (“787”) and Brandon Pena (together, “Defendants”). Plaintiffs include Rivera and several opt-in Plaintiffs (the “Opt-Ins”). Relevant here are a subset of four Opt-Ins claimants, all current or former baristas employed by 787: Matt Rosenbaum, Sheridan Plunkett, Kienan Ludke, and Isis Gamble (the “Responding Plaintiffs”). (ECF No. 55 at 1.)

On July 14, 2023, Defendants moved for partial summary judgment against the Responding Plaintiffs, arguing that, based on depositions of the four Responding Plaintiffs, none could establish any reasonable basis to conclude they had ever been illegally denied overtime payments while employed at 787. (ECF No. 57 at 3 – 5.) Defendants argued that the admissions by Responding Plaintiffs during their depositions warranted judgment as a matter of law against their overtime claims.

In response to Defendants’ motion, Responding Plaintiffs informed the Court that the relevant Opt-Ins jettisoned their overtime claims: “[T]his letter . . . serves to advise the Court that . . . Rosenbaum, . . . Plunkett, . . . Ludke, and . . . Gamble are not pursuing any claims . . .

for unpaid overtime under either the . . . [FLSA] or New York State Labor Law.” (ECF No. 58 at 1.)

On July 25, 2023, the Court held a telephonic pretrial conference at which Defendants reiterated their arguments in favor of dismissing the Responding Plaintiffs’ overtime claims, and Responding Plaintiffs reiterated to the Court that they agreed that the four Responding Plaintiffs lacked a reasonable basis to assert an overtime claim under the FLSA or state law. (ECF No. 62.)

Defendants’ motion for partial summary judgment on Rosenbaum, Plunkett, Ludke and Gamble’s overtime claims is accordingly granted as unopposed. The following claims by these four Opt-In Plaintiffs remain in the litigation and are independent of overtime liability: (1) claims for violations of the minimum wage provisions of the FLSA, *see* 29 U.S.C. § 206; (2) claims for violations of the minimum wage provisions of the New York Labor Law, *see* N.Y. Lab. L. § 160; (3) claims for violations of the Spread-of-Hours Wage Order, *see id.* §§ 190, 650; (4) claims for violations of the notice and record keeping requirements under the New York Labor Law, *see id.* § 195(1); (5) claims for violations of the wage statement provisions of the New York Labor Law, *see id.* § 195(3); and (6) violations of the unlawful deduction provisions of the New York Labor Law, *see id.* § 196-d. (ECF No. 58 at 1.)

The Clerk of the Court is directed to close the Docket Entry at ECF Number 53.

SO ORDERED.

Dated: July 27, 2023
New York, New York



J. PAUL OETKEN
United States District Judge